

REMARKS

Status Of The Claims

Claims 1-18 are pending in the application.

Claims 1-18 stand rejected.

The Amendment

Claims 1 and 5 have been amended to state that the flavoring agent is to be selected from the group consisting of fruit, herbal, sweet and spice. Claims 2, 6, 10 and 15 have been canceled accordingly. Claims 3, 7, 11 and 16 have been amended accordingly.

The First Rejection Under 35 U.S.C. 102(b)/103(a)

The Examiner has rejected claims 1-2, 4-6, 8, 14, 15, 17 and 18 under 35 U.S.C. 102(b) as anticipated by, or in the alternative, under 35U.S.C. 103(a) as obvious over Record et al. (US 5,372,824). The Examiner holds that "Record et al. teach the combination of flavor and N-ethyl-p-menthane-3-carboxamide in the amounts claimed for use in chewing gums (see entire patent). The claims differ as to enhancement. Enhancement would be inherent and/or obvious to that of Record et al. as the same components are used." The Examiner is respectfully requested to reconsider and withdraw the rejection for the reasons as follow.

Applicants claimed invention concerns an enhanced flavoring composition comprising at least one flavoring agent selected from the group consisting of fruit, herbal, sweet and spice, and an amount of N-ethyl-p-menthane-3-carboxamide effective to enhance the flavoring agent wherein the N-ethyl-p-menthane-3-carboxamide is present at about 0.04 to about 2.2 % by weight of the enhanced flavoring composition. The invention further concerns chewing gums and confectionery compositions containing a flavoring effective amount of the enhanced flavoring compositions.

N-ethyl-p-menthane-3-carboxamide is a known cooling agent. It is often used in conjunction with menthol which is also a known cooling agent. Menthol is also used in products for its mint flavor. There is no prior art teaching to the usefulness of the combination of N-ethyl-p-menthane-3-carboxamide with flavorants absent the presence of a mint flavorant and/or menthol in its capacity as a flavorant. The art in fact teaches away from such use. WO 97/06695 teaches that compounds used as cooling agents all have a negative impact on flavors, particularly fruit flavors, and that in order to avoid the problem, flavors and cooling agents must be formulated into distinct and discreet regions of the confectionery product.

Record et al. (US 5,372,824) teach mint-flavored chewing gums having reduced bitterness. Bitterness in mint-flavored gums will occur in the latter part of chewing when

the sweeteners have been dissipated. The reduced bitterness is achieved by reducing the amount of l-menthol in the peppermint oil used as the mint flavoring agent. An embodiment of the invention teaches the addition of cooling agents to the l-menthol-reduced flavoring agent in order to add back some of the cooling effect, or perception, lost with the l-menthol reduction. Since the Record et al. teaching inherently only concerns peppermint oil, i.e., mint flavorant use, any teaching or suggestion regarding non-mint flavoring agents can only be incidental. A search of the teaching shows that there are no (comparative) examples to a product not containing a mint flavorant. Record et al. cannot therefore be held to anticipate applicants' claimed invention. Nor, for the reasons discussed above, can Record et al. be held to suggest it. Record et al. was concerned only with the improvement of the cooling effect in a mint flavorant wherein the amount of menthol is reduced. Cooling agents are used by Record et al. to provide a cooling effect, their known use, and not to enhance the mintiness of the peppermint flavor. There is no suggestion of the use of cooling agents to enhance mint flavors. There is no suggestion of the use of cooling agents for flavor enhancement of non-mint flavors.

In view of the above, the Examiner is respectfully requested to withdraw the rejection of claims 1, 4, 5, 8, 14, 17 and 18 under 35 U.S.C. 102(b)/103(a), as amended.

The Second Rejection Under 35 U.S.C. 102(b)/103(a)

The Examiner has rejected claims 1-18 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cherukuri et al. (US 5,009,893). The Examiner holds that "Cherukuri et al. teach the combination of a flavor (e.g. mint and cherry) and N-ethyl-p-menthane-3-carboxamide in the amounts claimed for use in chewing gums and confections (see entire Patent). The claims differ as to enhancement. Enhancement would be inherent and/or obvious to that of Record et al. as the same components are used." The Examiner is respectfully requested to reconsider and withdraw the rejection for the reasons as follow.

Applicants' invention is as discussed above.

Cherukuri et al teach combinations of menthol and carboxamides to be utilized as cooling agents. The preferred ratio is from about 5 to about 70% by weight menthol and about 30 to about 95% by weight of N-ethyl-p-menthane-3-carboxamide in the combination. The purpose of the combination was to provide long lasting breathe freshening without bitterness. The apparent goal, as with Record et al., was to reduce the bitterness found with the use of menthol alone. In the present case, i.e., to reduce the bitterness associated with the use of menthol as a cooling agent. Cherukuri et al., as with Record et al., concerns the known use of the carboxamides, i.e., as cooling agents. Cherukuri et al. do not state that the invention only concerned the improvement of mint flavors as Record et al. did. Cherukuri et al. however do state that the problem that they were correcting was found in mint flavor use. (Col, lines 26-43.) No other flavoring agents are discussed. A search of the teaching shows that the only example which contains a flavor agent other than mint or menthol is a comparative example found in

Example 3, Table V, at #3. The cooling agent is designated as "cooling compound 2470". The Cherukuri et al. teaching does not show that cooling compound 2470 represents N-ethyl-p-menthane-3-carboxamide. (All prior examples which utilize N-ethyl-p-menthane-3-carboxamide so designate it by name.) All one can conclude is that cooling agent 2470 is a carboxamide. As with Record et al. Cherukuri et al. therefor cannot be held to anticipate applicants' claimed invention since there is no anticipatory teaching of N-ethyl-p-menthane-3-carboxamide and non-mint flavorant. Nor for the reasons discussed above, can Cherukuri et al. be held to suggest it. The reference teaches the use of carboxamides as cooling agents for their known effect as cooling agent in combination with another cooling agent, menthol, which also provides a mint flavor. No utility for same is found other than in mint flavored products. The only example which does not contain a mint flavorant/menthol is a comparative example which does not name the carboxamide. The example is portrayed as a negative result, as not providing sufficient cooling. (If one can coordinate Example 3, V#3, with Figure 3 as instructed, it appears that Example 3, V#3, is Line (c) in Figure 3.) One would not be led to select N-ethyl-p-menthane-3-carboxamide from the disclosed carboxamides combine with non-mint flavors in an expectation of providing a product having useful properties. One would not be led to enhanced non-mint flavorants.

Cherukuri et al. do not teach nor do they suggest the claimed invention. In view of the above, the Examiner is respectfully requested to withdraw the rejection of claims 1-18 as amended.

Conclusion

In view of the above applicants believe all of the claims in this application are in condition for allowance. If any questions remain, the resolution of which would be advanced by conference (telephonic or personal) with applicants' agent, the Examiner is invited to contact said agent at the telephone or the fax number noted below.

Respectfully submitted,
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